

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.56/NAG/2023

निर्धारणवर्ष / Assessment Year :2018-19

Bajaj Steel Industries Ltd., C-108, Hingna Road, MIDC Industrial Area, Hingna, Nagpur – 440028. PAN: AAACB5340H	V s	The Director of Income Tax, Intelligence & Criminal Investigation, 3 rd Floor, Room No.301, Aayakar Bhawan, Civil Lines, Nagpur – 440001.
Appellant/ Assessee		Respondent/Revenue

Assessee by	Shri Rajesh Loya – CA-AR
Revenue by	Shri Abhay Y. Marathe – Sr.DR
Date of hearing	27/03/2024
Date of pronouncement	10/04/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee directed against the order of Id.Commissioner of Income Tax(Appeals) passed u/s250 of the Income Tax Act, 1961 emanating from the penalty order under section 271FA of the Act dated 27.09.2019 passed by Director of Income Tax(Intelligence &

Criminal Investigation), Nagpur for F.Y.2017-18. The assessee has raised the following grounds of appeal :

“1. That the Penalty Notice issued and the Penalty Order passed by the learned Director of Income Tax, Intelligence and Criminal Investigation, Nagpur u/s. 271FA is bad in law and wrong on facts and the learned CIT(A) erred in upholding the same.

2. That the learned CIT(A) erred in law and on facts in upholding the order passed by AO and in not properly considering the facts of the case. On facts and circumstances of the case, the provisions of section 285BA of the Act are not applicable to assessee as there is no reportable transaction for the year. The action of learned CIT(A) is therefore highly unjustified.

3. That the learned CIT(A) erred in law and on facts in confirming the action of AO in levying penalty of Rs.87,000/- u/s. 271FA for delay in filing SFT Report as per prescribed time limit u/s. 285BA r.w.s. 114E of the Act. On the facts and circumstances of the case, there was a reasonable cause for delay and the assessee has complied with the law subsequently and therefore the penalty levied is unjustified and improper.

4. That for any other ground with kind permission of your honour at the time of hearing of appeal.”

2. The ld.CIT(A) dismissed the appeal of the assessee.

Therefore, assessee filed an appeal before this Tribunal.

Findings & Analysis :

3. We have heard both the parties and perused the records. It is observed that the penalty order under section 271FA has been passed by Director of Income Tax(Intelligence & Criminal Investigation), Nagpur. The assessee has filed appeal against the said order under section 271FA before ld.CIT(A). The ld.CIT(A) has dismissed the appeal of the assessee. Paragraph 3 of the ld.CIT(A)'s order is reproduced as under :

*“3. Notice u/s 250 of the I.T Act was issued to the appellant on 16.11.2022 asking the appellant to file details in support of the grounds of appeal on or before 01.12.2022. However, appellant did not reply to the notice. Accordingly, a 2nd notice u/s 250 of the I.T Act was issued on to the appellant on 05.12.2022 asking the appellant to file details in support of the grounds of appeal on or before 20.12.2022. In this notice the appellant was duly informed that this is the final opportunity granted. However, appellant again did not reply to the 2nd notice too till date. In absence of details in support of GOA filed, appeal cannot be decided. The non-compliance to the 2 notices issued shows that the appellant is not interested in pursuing its appeal. The order of A.O is upheld and the appeal stands **DISMISSED.**”*

3.1 Thus, ld.CIT(A) has not discussed anything about the grounds raised by assessee. The assessee in Form No.35 had raised following grounds before the ld.CIT(A) :

‘That the penalty order u/s 27 I FA of the Income Tax Act, 1961 is not acceptable because the total receipts as shown in SFT reporting is Rs.7.74 lakhs, but individual transaction value or cash receipts does not exceed Rs. 2.00 lakhs or more at any point of time or in a single day, during the year under reporting and hence section 2 69 ST of the Income Tax Act, 1961 are not applicable to the assessee.

That the assessee company has filed the SFT re porting only for safer side of law. Since this was the first year of filing and due to some wrong interpretation of law, the assessee has report the transactions/receipts which was not required to be reported as per law.

That on the basis of nature of receipts from scarp sale customers and as per law the assessee shall not be required file SFT reporting U/s 285 BA of the Act and hence penalty provision u /s 271 FA of the Act. Shall also not applicable at all. ”

3.2 The Hon’ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF)(Bombay)/[2017] 297 CTR 614 (Bombay) as under :

Quote, “8.From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn.

Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not

empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.” Unquote.

4. Thus, the Hon’ble Bombay High Court has categorically held that CIT(A) has to decide the appeal on merit and CIT(A) does not have any power to dismiss appeal for non-prosecution.

5. In view of this, the order of the ld.CIT(A)[NFAC] is set-aside to ld.CIT(A) for denovo adjudication. The ld.CIT(A) shall provide opportunity of hearing to the assessee.

6. Ld.Departmental Representative(ld.DR) for the Revenue had pleaded that the appeal filed by the assessee before Ld.CIT(A)was “Not-Maintainable” as ld.CIT(A) does not have jurisdiction to decide penalty under section 271FA passed by Director of Income Tax. However, the argument of the ld.DR cannot be considered as ld.CIT(A) has dismissed the appeal of the assessee for “Non-Compliance”. Ld.CIT(A) has not discussed about “Maintainability” of the appeal. Hence, the pleadings of ld.DR are dismissed.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 10th April, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th April, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, नागपुरबेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT ,Pune.